

**Department of Justice for Northern Ireland
Examining the use of Expert Witnesses appearing in the Courts in
Northern Ireland**



A response by the Association of Personal Injury Lawyers

February 2015

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 25-year history of working to help injured people gain access to justice they need and deserve. We have around 3,800 members, 70 of those in Northern Ireland, committed to supporting the association's aims and all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, Governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Warren, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.warren@apil.org.uk

Introduction

We welcome the opportunity to comment on the Department of Justice for Northern Ireland's consultation on expert witnesses. APIL strongly believes that the plaintiff should have the right to instruct their own expert in personal injury claims. The Northern Irish system is adversarial in nature, meaning that each party brings their case and presents it to the court. Having a choice of expert witness ensures that the plaintiff is equipped to do this, and legally aided plaintiffs should not be disadvantaged by being restricted in or denied the chance to choose the most suitable expert to help them put their case across.

We have only responded to questions within the remit of personal injury law.

Q 3) What are your views on the use of a single joint expert in criminal and other cases? In what circumstances might a single joint expert, whether appointed by the court or chosen by agreement by the parties, be sufficient in delivering expert witness services? In what circumstances would this not be appropriate?

APIL strongly believes that the plaintiff should have the right to instruct their own expert in personal injury, clinical negligence and disease claims. The requirement that a single joint expert is instructed would severely restrict the legally aided plaintiff's right to choose their own expert.

Q 4) Is there scope to utilise a single court appointed expert? When would this be appropriate? In what circumstances would a single court appointed expert not be appropriate and why?

We do not believe that there is scope to utilise a single court appointed expert. Again, we believe that the plaintiff should have the right to choose who they instruct, and this proposal would infringe this right.

Q5 Presently, there is little or no uniformity to fees paid to experts performing similar functions. Is it appropriate to set fixed fees for expert witness services under legal aid?

Fixed fees should not inhibit the expert's ability to take on the case or do the job to the highest standard. Fixed fees may restrict the plaintiff's choice of expert because an expert will be less likely to take on a contentious case on the basis of fixed costs when they can receive the same pay for work on a non-contentious case. At the same time, the defendant will likely have unlimited resources at their disposal to choose an expert, and no restriction on the fee that they pay. If a plaintiff is unable to employ the expert that they require due to limitations placed on fees, therefore, this could create an inequality of arms between the injured person and the defendant. This seems especially unjust in cost bearing cases such as personal injury and clinical negligence where, if the plaintiff is successful, the cost of pursuing the claim will be borne by the defendant and there will be no loss to the legal aid fund. APIL believes that where there is the chance of recovering legal aid costs from the other side, the legal aid fund should expect to pay the market rate for getting the right evidence from the right expert.

Additionally, providing one rate would be unfair to those in the profession as well as limiting access to justice for the plaintiff. Unfairness will arise where one expert is instructed to

undertake more complex work, and another expert of similar experience is instructed to undertake relatively straightforward work. They both receive the same fixed fee, and as a result one expert will be under remunerated and one will be over remunerated.

Q6) Is it appropriate to remunerate expert witnesses at an hourly rate under legal aid? Is additional flexibility required in setting appropriate fee rates?

As above, legally aided plaintiffs should not be disadvantaged when bringing a claim against the defendant insurer. The hourly rate must be relative to the expertise of the expert, and to them fulfilling their role to an expected standard. The plaintiff should be able to employ the expert that they require, and fees need to be set at a level which allows the expert to carry out the work to the required standard.

Furthermore, if the Northern Ireland Legal Services Commission (soon to be the Legal Services Agency Northern Ireland) is not willing to pay the market rate for experts, and as a result good expert witnesses are put out of the reach of legally aided plaintiffs, the number of successful cases will surely be reduced. The amount of money paid out to cover unsuccessful cases will increase, and fewer costs will be recouped from the defendant. The success rate for legal aid in personal injury cases is currently very high. If the plaintiff wins, the cost will be recoverable from the defendant and the cost to the legal aid fund will be zero. The better the expert, the more likely it is that the plaintiff will be successful, with no claim on the legal aid fund.